

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early
Termination of Probation
Against:**

David Mir, M.D.

**Physician's and Surgeon's
Certificate No. A 96676**

Respondent.

Case No. 800-2022-085246

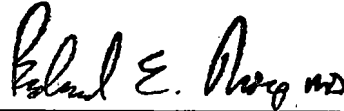
DECISION

**The attached Petition for Early Termination of Probation is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on October 9, 2023.

IT IS SO ORDERED September 8, 2023.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early Termination of
Probation Filed by:**

DAVID MIR, M.D., Petitioner

Physician's and Surgeon's Certificate No. A 96676

Case No. 800-2022-085246

OAH No. 2023050329

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter by videoconference on July 19, 2023.

Kevin Cauley, Attorney at Law, represented David Mir, M.D., petitioner.

Nicole Noonan-Miller, Deputy Attorney General, represented the Attorney
General pursuant to Government Code section 11522.

The matter was submitted on July 19, 2023.

SUMMARY

Effective January 2, 2020, the Medical Board of California (Board) revoked petitioner's certificate, stayed the revocation, and placed him on probation for five years with terms and conditions due to his conviction for driving under the influence of alcohol (DUI), a misdemeanor, in violation of Vehicle Code section 23152, subdivision (a). Petitioner seeks to terminate his probation. Petitioner has shown by clear and convincing evidence that it is not contrary to the public interest, or the need for public protection, to terminate his probation. His application is granted.

FACTUAL FINDINGS

Jurisdictional Matters and Disciplinary History

1. On August 2, 2006, the Board issued Physician's and Surgeon's Certificate No. A 96676 to petitioner. Effective January 2, 2020, petitioner's certificate was placed on probation for five years with various terms and conditions as a result of the accusation the Board's then Executive Director signed and filed on January 8, 2019, in the matter titled *In the Matter of the Accusation Against David Mir, M.D.*, Case No. 800-2016-020351. According to the accusation, petitioner was convicted on his plea of guilty to DUI on August 25, 2016, in the matter entitled *People v. David Mir*, in Superior Court of California, County of Orange, Case No. 16HM01158MA. As a factor in the imposition of discipline, the accusation cited petitioner's DUI conviction on June 24, 1991, in the State of Indiana during the time petitioner was in college.

2. To resolve the accusation, petitioner signed on September 30, 2019, a Stipulated Settlement and Disciplinary Order. In this stipulation, he agreed to have his

certificate placed on probation for the five years with terms and conditions as mentioned above. He admitted to the truth of every charge and allegation in the accusation. Petitioner's probation is set to expire on January 2, 2025.

3. The terms and conditions of petitioner's probation require him to abstain from the use of alcohol, submit to random biological fluid screens, have a worksite monitor for a substance abusing physician, submit to a clinical psychological examination, and attend a substance abuse support group.

4. As required under the stipulation, petitioner submitted to a clinical diagnostic evaluation for the Board conducted by Timothy Botello, M.D. Dr. Botello found petitioner suffering from an alcohol abuse problem in remission. He further found petitioner safe to practice medicine with the practice restrictions noted in the stipulation. Dr. Botello cited specifically the requirements that petitioner attend Alcoholic Anonymous (AA) meetings and submit to random drug urine testing.

5. Petitioner has been, for the most part, compliant with the terms of his probation. At the hearing, the Attorney General questioned whether petitioner fully met the substance abuse support group meeting requirement because he did not attend AA meetings. As discussed below, petitioner did not attend AA meetings but instead attended a support group for physicians run by Helen O'Mahony, Ph.D., a clinical psychologist, Flying Knee Physicians' Monitoring group. Dr. O'Mahony testified about petitioner's attendance and participation in the group. As also discussed below, petitioner's participation in Dr. Mahony's group satisfied the support group meeting requirement in the stipulation.

On one occasion, petitioner missed one check in for random biological fluid testing on December 8, 2020. Petitioner satisfactorily explained that the missed check

in was due to an inadvertent mistake on his part as he started the regimen for biological fluid testing.

Facts and Circumstances of Petitioner's 2016 DUI

6. The facts and circumstances of petitioner's 2016 DUI conviction are summarized in the accusation, which as noted petitioner accepted as true, as follows:

On January 17, 2016, petitioner was driving at about 93 miles an hour and weaving in and out of traffic. Two California Highway Patrol (CHP) officers on routine patrol saw petitioner's vehicle driving at a high rate of speed weaving in and out of traffic and initiated a stop to which petitioner was slow to respond. Upon engaging petitioner, one of the officers detected the strong odor of alcohol from petitioner and ordered him to exit his car, which he did. At this point petitioner told the officer he was a physician, and he was not drunk. He further told the officer he had not consumed alcohol in the last five hours. Field sobriety tests were administered, which petitioner failed. The officer advised petitioner he was under arrest for DUI and attempted to place handcuffs on him. Petitioner shouted: "Go to hell you fucking asshole." Petitioner then resisted arrest, and both officers had to restrain petitioner. Petitioner shouted: "I can kick your ass, take these cuffs off and I'll kick your ass." He then said, "Fuck both of you, you Chinese fucking prick." He looked at the second officer and shouted, "You fucking homosexual." Both officers placed petitioner on the ground in a prone position and called for backup. The officers who arrived as backup placed petitioner in leg restraints and on his side in the rear of the CHP cruiser. Petitioner then stated, "If I had a gun I would shoot both of you."

Alcohol breath tests showed his blood alcohol concentration content (BAC) to be 0.20 and 0.21.

Petition for Penalty Relief

7. On January 2, 2022, petitioner signed the Petition for Penalty Relief to terminate his probation early. Petitioner attached to the petition a narrative statement, and his curriculum vitae.

In addition, petitioner submitted a certification dated June 30, 2016, from Leslie Place, Continuing Care Coordinator, at the Betty Ford Center confirming petitioner successfully completed the program's inpatient chemical dependency alcohol treatment program on June 30, 2015; a letter dated December 17, 2021, signed by Helene O'Mahoney, Psy.D., confirming petitioner's participation in therapy and group sessions at Flying Knee Physician's Monitoring group; letters from Tracy Lee, M.D., dated November 9, 2021; Roger Killer, the owner of Clineva Urgent Care, an occupational medicine clinic where petitioner has worked since 2019; and Angizen Sadeghi, M.D., dated December 8, 2021, a board certified gastroenterologist, who knows petitioner professionally and personally. In addition, petitioner submitted certificates confirming his successful completion of continuing education courses, and positive online reviews from patients treated by petitioner.

Petitioner's Testimony

8. Petitioner testified and submitted a narrative statement. His testimony and statement are summarized as follows:

9. Petitioner has been sober for seven years starting in May 2016 and proud he has been sober for this time. He said he loves being sober and will never drink alcohol again. He said that he regards sobriety as beyond being sober from alcohol, but also being a sober approach to life. He now understands he had an unhealthy relationship with alcohol.

10. Following his arrest in 2016, petitioner decided he was an alcoholic and was abusing alcohol. On May 4, 2016, while the DUI charges were pending, he said he found himself in a difficult position due to anxiety and depression and checked himself into the Betty Ford Clinic. At the time of his arrest in January 2016, he drank alcohol every day after work. He recognizes now that he was depressed and had anxiety, and he lacked the emotional resources to work through his feelings. Petitioner successfully completed a 30-day inpatient program at Betty Ford and participated in an outpatient program for an additional three weeks.

11. After his discharge from Betty Ford and until petitioner began his Board probation, he frequently attended AA for two years and had a sponsor. He did not attend more AA meetings because he believes he had developed other emotional resources, and, as he testified, he had trouble in AA opening up to the AA group.

Petitioner believes he has, nonetheless, satisfied the support group meeting requirement through his participation in Dr. O'Mahony's physician support group. He started participating in this support group on February 6, 2021. He did not participate in a support group before he participated in Dr. O'Mahony's group because, he said, under the advice of his then attorney, he waited for the imposition of the Board's discipline, which included that requirement. Petitioner has been an active participant in Dr. O'Mahony's group. Petitioner noted that in Dr. O'Mahony's group, he has been able to process his thoughts and regards his participation in the group as an excellent growing point in his life. He said if his probation is terminated, he would continue with the group.

12. Except for a missed check in during the COVID pandemic in December 2020, petitioner has complied with the random biological fluid testing requirement. He explained that the missed check in occurred during the height of the pandemic, and

the Board allowed probationers to comply with testing requirements within 48 hours. Petitioner went to an urgent care to test, but he forgot to check in for that specific day while he was waiting to test.

13. Petitioner discussed the circumstances of his DUI arrest in January 2016. He said he was in a contentious relationship with his then fiancé, and they got into an argument at a restaurant. During the hearing, petitioner detailed the sources of their conflict which left him frustrated. After dinner they went to her residence, and he drank two or three vodkas; he said he did not plan to drink and drive. They argued and their argument got so bad, he decided to drive the 14 miles to his home. When he merged onto the freeway, he was driving at an excessive speed and CHP stopped him.

14. Petitioner is embarrassed by his behavior towards the CHP officers and feels horrible about it. He said he wishes he could take back what he said to them. Petitioner testified he apologized to the officers, which he said they accepted. He noted that the resisting arrest charge was dropped based on the plea agreement.

15. With regard to his high BAC, petitioner attributed it to, in his opinion as a physician, the fact that he had consumed alcohol shortly before he drove. It is not clear if he meant this explanation to serve as some kind of mitigating factor. It is not a mitigating factor.

16. Petitioner stated he complied with the terms of his criminal probation and had his record expunged. He has had no subsequent arrest or charges.

17. With regard to his life now, petitioner said he is now in a new and good relationship. He is committed to raising his son, caring for his elderly parents, and also caring for his sister, who is suffering from advanced stage cancer. Petitioner said he

has to keep his "shit together" to be there for his family and to balance a lot in his life to make sure he does this.

18. Petitioner wants to be off probation because he is scared he could lose his position at the medical office where he works due to being on probation. He would also like to travel with his son and parents, which he said is difficult because of the random biological fluid testing requirement.

Testimony of Helene O'Mahony, Ph.D.

19. Dr. O'Mahony testified on petitioner's behalf and also submitted a letter, which was received into the record. Her testimony is summarized as follows:

Dr. O'Mahony is the owner of Flying Knee, Inc., and a licensed clinical psychologist and facilitator of a Board-approved physician support group, Flying Knee Physicians' Monitoring group. The group meets weekly with Dr. O'Mahony. Petitioner has been an active participant in the group these last two years. Dr. O'Mahony believes petitioner's participation in the group satisfies the support group participation requirement. She described petitioner as very compliant and very communicative and open to sharing his experience with recovery. Dr. O'Mahony stated petitioner has moved from resentment to a position of acceptance and responsibility. He is motivated to be there for his elderly parents, his sister, and his son. She described him as the rock of his family.

20. Dr. O'Mahony believes petitioner's prognosis for continuing success recovery is excellent, and continued monitoring is not required. She testified that the standard for health care professionals for success in recovery is five years of sobriety, and petitioner has passed this threshold. She bases her opinion on her experience and training as a psychologist who has worked with physicians in recovery.

Letters from Dr. Sadeghi, Dr. Lee, and Mr. Killer

21. Petitioner submitted letters as noted earlier from Dr. Sadeghi, Dr. Lee, and also Roger Killer, the owner of the clinic where petitioner works.

22. Dr. Sadeghi states in her letter of support she knew petitioner for several years before his probation as a colleague and medical director. She writes that petitioner has overcome his personal difficulties and has grown in both his personal and professional life. She recommends that he be allowed to end his probation early.

23. Dr. Lee works with petitioner at the occupational medicine clinic and describes him as a physician with the utmost professionalism and clinical skill and an integral part of the clinic practice. She also recommends that petitioner be allowed to have his probation terminated.

24. Mr. Killer has employed petitioner since 2019 and has had the chance to observe his care of patients. He describes petitioner as an outstanding, smart, and compassionate physician. He asks that petitioner's probation be terminated.

The Parties' Arguments

25. In his closing comments, the Attorney General asked that the petition be denied. He asserted that petitioner has done the bare minimum, portrayed himself as the victim, which negates his statements of accountability and responsibility, and he has not had a meaningful and sustained rehabilitation. The Attorney General noted that the underlying conduct was egregious, and five years' probation is the appropriate time frame for probation for the conduct.

26. Petitioner argued that over the past seven years, petitioner has taken numerous steps to rehabilitate himself including his successful completion of the

program at Betty Ford and his work with Dr. O'Mahony and AA. Petitioner should not be blamed because the Board took three years to file the accusation against him. Petitioner cited Dr. O'Mahony's opinion that his prognosis is excellent, and he does not require monitoring.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a pleading to restore a disciplined professional license, the burden rests on petitioner to prove that he has rehabilitated himself and he is entitled to have the license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

2. A person seeking reinstatement must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

Cause Exists to Terminate Petitioner's Probation

3. The Board may terminate probation based upon a petitioner's activities since the discipline was imposed, and the petitioner's general reputation for truth and professional abilities, among other considerations. (Bus. & Prof. Code, § 2307, subds. (a) and (e).) In deciding whether termination of probation is an appropriate disposition, under California Code of Regulations, title 16, section 1360.2, various additional criteria are also to be considered. (Cal. Code Regs., § 1360.2, subds. (a)-(e).) These criteria

include the nature of the misconduct, the amount of time that has elapsed since the act, and evidence of the licensee's rehabilitation. (*Ibid.*). Courts have recognized rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) "While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice....." (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

4. Applying the above criteria and court guidance to this application, petitioner proved by clear and convincing evidence that termination of his probation is not against the public interest. This conclusion is reached because petitioner has maintained his sobriety over seven years, and he testified credibly he is committed to remaining sober. Through his active and meaningful participation in Dr. O'Mahony's group and a change in his mindset, he has taken steps to ensure he maintains it. He now has developed, it appears, the emotional resources to cope with anxiety and depression. While he equivocated somewhat in taking full responsibility for his disturbing behavior in 2016, suggesting he believes he was the victim of both his ex-fiancé, and CHP officers who needed to restrain him during his arrest, overall, the deciding factor in his favor is his commitment to lead a sober alcohol-free life. His conduct in 2016 seems to be a highly unfortunate incident he is unlikely to repeat.

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ORDER

The petition of David Mir, M.D., for early termination of his probation is granted.

DATE: August 14, 2023


Abraham M. Levy (Aug 14, 2023 08:17 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings